

BACKGROUND CHECKS

FOR

CHILD WELFARE AGENCIES

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Background Checks for Child Welfare Agencies

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CHAPTER 191.

BACKGROUND CHECKS FOR CHILD WELFARE AGENCIES.

22 VAC 40-191-10. Defining words and phrases.

The following words and terms when used in this regulation shall have the following meanings unless the context clearly indicates otherwise:

“Agent” means a person who acts on behalf of, or is an employee or volunteer with, a child welfare agency.

“Applicant” means the person or persons applying for approval as a (i) licensed family day home; (ii) licensed family day system; (iii) licensed child-placing agency; (iv) licensed independent foster home; (v) voluntarily registered family day home; (vi) family day home approved by a licensed family day system; (vii) foster and adoptive home approved by a licensed child-placing agency; or (viii) religious exempt child day center. In the case of a sole proprietorship, the applicant is the individual owner. In the case of a partnership, the applicants are all the partners. If the applicant is a corporation, limited liability company, public agency or similar entity, the applicant must designate at least one individual who must comply with the applicant’s obligation on its behalf.

“Approved” means having obtained the status of approval through the process required in Minimum Standards for Family Day-Care Systems (22 VAC-40-180) or Minimum Standards for Child-Placing Agencies (22 VAC 40-130). Approved facilities are (i) family day homes approved by licensed family day systems and (ii) foster and adoptive homes approved by licensed child-placing agencies.

“Background checks” means a sworn statement or affirmation, a criminal history record report, and a child protective services central registry check.

“Barrier crime” means a conviction identified at § 63.2-1719 in the Code of Virginia. The convictions, and Code of Virginia references, are: murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.), malicious wounding by mob as set out in § 18.2-41, abduction as set out in subsection A of § 18.2-47, abduction for immoral purposes as set out in § 18.2-48, assault and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.), robbery as set out in § 18.2-58, carjacking as set out in § 18.2-58.1, extortion by threat as set out in § 18.2-59, felony stalking as set out in § 18.2-60.3, sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, burglary as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2, any felony violation relating to possession or distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, drive-by shooting as set out in § 18.2-286.1, use of a machine gun in a crime of violence as set out in § 18.2-289, aggressive use of a machine gun as set out in § 18.2-290, use of a sawed-off shotgun in a crime of violence as set out in subsection A of § 18.2-300,

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failure to secure medical attention for an injured child as set out in § 18.2-314, pandering as set out in § 18.2-355, crimes against nature involving children as set out in § 18.2-361, incest as set out in § 18.2-366, taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, obscenity offenses as set out in § 18.2-374.1, possession of child pornography as set out in § 18.2-374.1:1, electronic facilitation of pornography as set out in § 18.2-374.3, abuse and neglect of incapacitated adults as set out in § 18.2-369, employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in § 18.2-379, delivery of drugs to prisoners as set out in § 18.2-474.1, escape from jail as set out in § 18.2-477, felonies by prisoners as set out in § 53.1-203; or an equivalent offense in another state.

“Board” means State Board of Social Services.

“Central registry” means the record of founded complaints of child abuse and neglect maintained by the Department of Social Services.

“Central registry finding” means the record of founded complaints of child abuse and neglect for an individual.

“Central Criminal Records Exchange” or “CCRE” means the information system containing conviction data of crimes committed in Virginia. The system is maintained by the Department of State Police.

“Child day program” means a regularly operating service arrangement for children where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of a child under the age of 13 for less than a 24-hour period.

“Child-placing agency” means any person or agency licensed to place children in foster homes, adoptive homes or independent living arrangements pursuant to § 63.2-1819 of the Code of Virginia or a local board that places children in foster homes or adoptive homes pursuant to §§ 63.2-900, 63.2-903 and 63.2-1221 of the Code of Virginia. Officers, employees, or agents of the Commonwealth, or any locality acting within the scope of its authority as such, who serve as or maintain a child-placing agency, are not required to be licensed.

“Child welfare agency” means a child day center, child-placing agency, children’s residential facility, family day home, family day system, or independent foster home. For purposes of this regulation, the requirements for child welfare agencies also apply to foster or adoptive homes requesting approval or with approval by child-placing agencies and foster homes requesting approval or with approval by family day systems.

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“Commissioner” means the Commissioner of the Virginia Department of Social Services or his designee.

“Contract agency” means an entity with which the facility or a parent has an agreement to provide services to a child or children while attending the facility.

“Contract employee” means a person with whom the facility or a parent has an agreement to provide services to a child or children while attending the facility.

“Contracting organization” means an agency that has been designated by the Department of Social Services to administer the voluntary registration program for family day homes.

“Criminal history record check” means the process the Department of State Police uses to generate a criminal record report on a person. The check may be a state check generated solely through the Central Criminal Records Exchange or a check forwarded through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining national criminal history record information.

“Criminal history record report” means either the criminal record clearance or the criminal history record issued by the Central Criminal Records Exchange, Department of State Police. The report identifies convictions within the Commonwealth.

“Department” means the Department of Social Services.

“Department representative” means an employee of the department who carries out regulatory duties or an agency acting as an authorized agent of the department carrying out approval functions. Licensed family day systems have authority to approve family day homes. Licensed child-placing agencies have authority to approve foster and adoptive parents.

“Disqualifying background” means (i) having been the subject of a founded complaint of child abuse or neglect even if his record has been purged from the Child Abuse and Neglect Central Registry system, (ii) a barrier crime conviction, or (iii) any other felony not included in the definition of “barrier crime,” unless five years have elapsed since the conviction. For the purpose of this regulation, no person is considered to be the subject of a founded complaint of child abuse or neglect until a decision upholding the finding has been rendered by the hearing officer after the administrative hearing, provided the person complies with the requirements for requesting an administrative hearing. No person is considered to be the subject of a founded complaint of child abuse or neglect if the child abuse or neglect finding is overturned by an administrative hearing or a subsequent court decision.

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“Employee” means a person hired by a facility or with whom the facility has an employment agreement. A provider assistant in a family day home is considered an employee in this chapter.

“Facility” means (i) a licensed family day home; (ii) a licensed family day system; (iii) a licensed child-placing agency; (iv) a licensed independent foster home; (v) a voluntarily registered family day home; (vi) a family day home approved by a licensed family day system; (vii) a foster and adoptive home approved by a licensed child-placing agency; (viii) a religious exempt child day center; and (ix) an applicant seeking a waiver in order to establish one of the above listed entities.

“Family day home” means a child day program offered in the residence of the provider or the home of any of the children in care for one through 12 children under the age of 13, exclusive of the provider’s own children and any children who reside in the home, when at least one child receives care for compensation. The provider of a licensed or registered family day home must disclose to the parents or guardians of children in their care the percentage of time per week that persons other than the provider will care for the children. Family day homes serving six through 12 children, exclusive of the provider’s own children and any children who reside in the home, must be licensed. However, no family day home shall care for more than four children under the age of two, including the provider’s own children and any children who reside in the home, unless the family day home is licensed or voluntarily registered. However, a family day home where the children in care are all grandchildren of the provider is not required to be licensed.

“Family day system” means any person who approves family day homes as members of its system; who refers children to available family day homes in that system; and who, through contractual arrangement, may provide central administrative functions including, but not limited to, training of operators of member homes; technical assistance and consultation to operators of member homes; inspection, supervision, monitoring, and evaluation of member homes; and referral of children to available health and social services.

“Good character and reputation” means that the person (i) maintains business, professional, family, and community relationships that are characterized by honesty, fairness, truthfulness and dependability and (ii) has a history or pattern of behavior that demonstrates that the person is suitable and able to care for, guide, supervise, and protect children.

“Independent foster home” means a private family home in which any child, other than a child by birth or adoption of such person, resides as a member of the household and has been placed there independently of a child-placing agency except (i) a home in

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which are received only children related by birth or adoption of the person who maintains such home and children of personal friends of such person and (ii) a home that receives a child or children committed under the provisions of subdivision A 4 of § 16.1-278.2, subdivision 6 of § 16.1-278.4 or subdivision A 13 of § 16.1-278.8 of the Code of Virginia.

"Involved in the day-to-day operations" means:

1. In a supervisory or management position, making daily decisions regarding the operation of the facility;
2. Counted by the facility for purposes of staff-to-children ratios;
3. Providing casework services for a child-placing agency;
4. Employed by a licensed family day system as a home visitor; or
5. Having access to child- and client-related records or to facility personnel records.

"Licensed" means having met the requirements of and obtained licensure as a licensed family day-care system, licensed independent foster home, licensed private child-placing agency, or licensed family day home.

"Living in" means to reside in a place for an extended or permanent period of time.

"Local agency" means local department of social services.

"May" means has permission.

"Must" means the action is a requirement.

"Must not" means the action is prohibited.

"National criminal background check" means criminal history record information from the Federal Bureau of Investigation.

"Offense" means a (i) conviction of a barrier crime, (ii) conviction of any other felony not included in the definition of barrier crime unless five years have elapsed since conviction, or (iii) founded complaint of child abuse or neglect within or outside the Commonwealth. Convictions include prior adult convictions and juvenile convictions or adjudications of delinquency based on a crime that would be a felony if committed by an adult within or outside the Commonwealth.

"Other felony" means conviction for any felony in the last five years that is not a barrier crime felony.

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“Parent-volunteer” means someone supervising, without pay, a group of children that includes the parent-volunteer’s own child in a program that operates no more than four hours per day, provided that the parent-volunteer works under the direct supervision of a person who has received a clearance pursuant to § 63.2-1720 or § 63.2-1724 of the Code of Virginia.

“Registered” means having obtained the status of registration through the process required in Voluntary Registration of Family Day Homes – Requirements for Providers (22 VAC 40-180).

“Registered family day home” means any family day home that has met the standards for voluntary registration for such homes pursuant to regulations adopted by the board and that has obtained a certificate of registration from the commissioner.

“Religious exempt center” means an unlicensed child day center operated or conducted under the auspices of a religious institution that has filed with the commissioner a satisfactory annual statement of intent to operate a child day center and other information as specified in § 63.2-1716 of the Code of Virginia and has a letter of exemption from the commissioner.

“Search of central registry” means the process the Virginia Department of Social Services’ Child Protective Services Unit uses to generate a central registry report on a person.

“Sex offense felony for family day homes” means conviction of a felony in violation of §§ 18.2-48, 18.2-61, 18.2-63, 18.2-64.1, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.5, 18.2-355, 18.2-361, 18.2-366, 18.2-369, 18.2-370, 18.2-370.1, 18.2-371.1 or § 18.2-374.1 that prohibits a sex offender or founded child abuser from residing in a family day home, whether or not the home is regulated or subject to regulation. The descriptions of the Code of Virginia sections are abduction; actual or attempted rape; carnal knowledge of a child between 13 and 15 years of age; carnal knowledge of a juvenile under the purview of the Juvenile and Domestic Relations District Court, or juvenile committed to the custody of the State Department of Juvenile Justice; actual or attempted forcible sodomy or object sexual penetration; aggravated sexual battery; attempted sexual battery; taking or detaining a person or consenting to the taking of a person for prostitution or unlawful sexual intercourse; crimes against nature; incest; abuse and neglect of incapacitated adults; taking indecent liberties with children; abuse and neglect of children; indecent liberties by a person in a custodial or supervisory relationship; and production, publication, sale, possession with intent to distribute, financing, etc. of sexually explicit items.

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"Sworn statement or affirmation" means a statement completed by a person attesting to whether he has ever been (i) convicted of or the subject of pending charges of any crime within or outside the Commonwealth or an equivalent offense outside the Commonwealth or (ii) the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth. Additionally for family day homes, the provider affirms if he, or any person known to the provider who resides in the home, has a sex offense conviction or is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth. Any person making a false statement regarding any such offense shall be guilty of a Class 1 misdemeanor pursuant to §§ 63.2-1720 and 63.2-1721 of the Code of Virginia.

"22 VAC" means Chapter 22 of the Virginia Administrative Code. This is the social services chapter.

"Visit" means a stay or sojourn as a guest for no longer than 30 calendar days.

"Volunteer" means a person who provides services without pay and who is alone with a child or children in performance of his duties.

22 VAC 40-191-20. Describing background checks.

A. The background checks covered by this regulation are:

1. Sworn statement or affirmation;
2. Criminal history record check;
3. National criminal background check; and
4. Central registry search.

B. The provisions for background checks are in §§63.2-1704, 63.2-1720, 63.2-1721, 63.2-1722, 63.2-1724, and 63.2-1727 of the Code of Virginia.

C. Provisions for enforcement of background check regulations and other licensing, registration, and approval standards are in Chapter 17 (§63.2-1700 et seq.) of Title 63.2 of the Code of Virginia.

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D. The sworn statement or affirmation is a written document in which a person must disclose any criminal conviction and any pending criminal charges within or outside Virginia.

1. For the purposes of this regulation, conviction includes any juvenile conviction or determination of delinquency if the offense involved would be a felony if committed by an adult within or outside Virginia.
2. The person must also disclose any instance of being the subject of a founded complaint of child abuse or neglect within or outside Virginia.
3. The person must use either the model form prepared by the department or use a self-created form that includes all of the information that appears on the model form.

The department provides the model sworn statement or affirmation form on its website. Requesters are permitted to submit copies of the form. The person who signs the sworn statement or affirmation affirms the truth of the statement.

E. The criminal history record check is the process of the Department of State Police to generate a criminal record report on a person. The report must be either the criminal record clearance or the criminal history record. The criminal record clearance shows whether the person is guilty of:

1. A barrier crime, as defined in § 63.2-1719 of the Code of Virginia; and/or
2. Any other felony not included in the definition of barrier crime unless five years have elapsed since the conviction.

The criminal history record report shows all convictions.

F. The person must use the form and process of the Central Criminal Records Exchange (CCRE) of the Department of State Police for this check. The Department of State Police provides original criminal history record check forms to facilities upon receipt of request. The Department of State Police also provides website access to this form for facilities that are noncriminal justice inquiry interface users. The CCRE verifies criminal history record reports.

G. The national criminal background check is the process of obtaining criminal history record information from the Federal Bureau of Investigation through the Central Criminal Records Exchange.

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1. The person must submit to fingerprinting and provide personal descriptive information.

2. The person must use the process of the Central Criminal Records Exchange (CCRE) to request and receive a national criminal background check.

H. The search of the central registry is a check to determine if the person has ever been the subject of a founded complaint of child abuse or neglect in Virginia.

I. The person must use the form and process of the Child Protective Services (CPS) Unit of the department. The department provides the central registry request form on its website. Requesters are permitted to submit copies of this form. The CPS Unit verifies child protective services central registry check findings.

The department and registering and approval agencies provide copies of all forms in application packets.

22 VAC 40-191-30. Identifying the facilities that are not covered by this regulation.

A. Licensed child day centers; certified preschools or nursery schools operated by accredited private schools that are accredited in accordance with § 63.2-1715 of the Code of Virginia; children's residential facilities; and family day homes that are not required to be licensed, registered, or approved are not covered by this regulation.

Exception: The waiver requirements found in 22 VAC 40-191-90 through 22 VAC 40-191-150 do apply to licensed child day centers. All other background checks requirements for licensed child day centers are in 22 VAC 15-50.

B. Background check requirements for certified preschool or nursery school programs operated by accredited private schools are at § 63.2-1717 of the Code of Virginia.

C. Background check requirements for children's residential facilities, including child-caring institutions, are in 22 VAC 42-10 and in § 63.2-1726 of the Code of Virginia.

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D. Background check requirements for child day centers or family day homes that are not licensed, registered, approved, or exempt from licensure and receive federal, state or local child care funds are at § 63.2-1725 of the Code of Virginia.

22 VAC 40-191-40. Identifying who is covered by this regulation.

A. This regulation applies to:

1. Licensed family day homes;
2. Licensed family day systems;
3. Family day homes approved by family day systems;
4. Licensed child-placing agencies;
5. Licensed independent foster homes;
6. Foster and adoptive homes approved by child-placing agencies;
7. Voluntarily registered family day homes; and
8. Religious exempt child day centers.

B. Background checks are required at the time of initial application.

1. These background checks are required at the time of application for licensure, registration, or approval:

| Who | What | When |
|--|---|--|
| a. Any applicant | Sworn statement or affirmation, search of central registry, and criminal history record check | Upon application for licensure or registration as a child welfare agency |
| b. Any agent at the time of application who is or will be involved in the day-to-day operations of the child welfare agency or who is or will be alone with, in control of, or supervising one or more of the children | Same | Same |
| c. Any other adult living in the home of an applicant for licensure or registration as a family day home, or any existing employee or volunteer | Same | Upon application for licensure or registration as a family day home |

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| Who | What | When |
|---|---|--|
| d. Prospective foster or adoptive parent | Sworn statement or affirmation, search of central registry, criminal history record check, and national criminal background check | Upon request for approval by child-placing agency |
| e. Birth parent of a child in a foster care placement | Sworn statement or affirmation, search of central registry, criminal history record check, and national criminal background check | Prior to placement of a child with birth parent |
| f. Operator of family day home requesting approval by family day system | Sworn statement or affirmation, search of central registry, and criminal history record check | Upon request for approval by family day system |
| g. Any other adult residing in the family day home requesting approval and any employee or volunteer of a family day home | Same | Upon request by operator for approval by family day system |

h. Exception: In emergency circumstances involving subdivisions 1 d and 1 e of this subsection, a child-placing agency may place a child after receipt of a sworn statement or affirmation, search of the central registry, and criminal history record report.

(1) Within three days of placing a child, a child-placing agency must require the individual for whom a criminal history record check was requested to submit to fingerprinting and provide the personal descriptive information necessary to obtain a national criminal background check.

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(2) The child must be removed from the home immediately if any adult resident fails to provide fingerprints and permission to perform a national criminal history record check when requested.

2. These background checks are required at the time of initial application for religious exemption status:

| Who | What | When |
|---|---|---|
| Any person who will be expected to be alone with one or more children enrolled in a religious exempt child day center except a parent-volunteer, as defined in this regulation, or a parent or guardian who may be left alone with his or her own child | Documentary evidence of sworn statement or affirmation, search of the central registry, and criminal history record check | With the written request for religious exemption status |

C. Background checks are required after the initial licensure, registration, approval, or receipt of religious exemption status.

1. These background checks are required after initial licensure, registration, or approval:

| Who | What | When |
|---|--|---|
| a. New person designated as applicant, licensee, registrant, approved individual, or agent who is or will be involved in the day-to-day operations of the facility or who is or will be alone with, in control of, or supervising one or more of the children | Sworn statement or affirmation | Whenever an applicant, licensee, approved individual, or registrant changes |
| | Search of central registry and criminal history record check | Before the end of 30 days after the change |

22 VAC 40-191-40.

| Who | What | When |
|--|--|--|
| b. Any employee of a licensed, registered, and approved facility who is involved in the day-to-day operations or who is alone with, in control of, or supervising one or more children | Sworn statement or affirmation | Prior to first day of employment at the facility |
| | Search of central registry and criminal history record check | Before 30 days of employment at the facility ends |
| c. Any applicant, licensee, approved individual, agent, employee, volunteer, and person living in the home who is required to have background checks | Sworn statement or affirmation, search of central registry and criminal history record check | Before three years since the dates of the last sworn statement or affirmation, most recent central registry finding and most recent criminal history record check report |
| d. Voluntary registration provider, provider assistant, substitute provider, if any, and any adult residing in the home | Sworn statement or affirmation, search of central registry and criminal history record check | 90 days before the date of application for renewal of the current certificate of registration (The application for renewal must be received by the contracting organization no later than 45 days before the expiration of the current certificate of registration.) |

22 VAC 40-191-40.

| Who | What | When |
|---|---|---|
| e. Volunteer at licensed, registered, or approved facility who will be alone with any child in the performance of duties, excluding a parent-volunteer for children attending a licensed, registered, or approved program | Sworn statement or affirmation ----- Search of central registry and criminal history record check | Prior to first day of service at the facility ----- Before 30 days of service at the facility elapses |
| f. Foster parent or other adult member of the household | Search of central registry | If child-placing agency staff believe it is necessary |
| g. All adult household members residing in the home of the individual with whom the child is to be placed | National criminal background check | If child-placing agency staff believe it is necessary |

h. A person whose most recent background checks were before 1990 must request new checks by the end of December 2004. A person whose most recent background checks were from 1991 through 1995 must request new checks by the end of December 2005. A person whose most recent background checks were from 1996 to the present must request new checks by the end of December 2006, or before five years since the dates of the last sworn statement or affirmation, most recent central registry finding and most recent criminal history record check report, whichever is the shorter period of time.

2. These background checks are required after receipt of the initial religious exemption status letter.

Annually, prior to the expiration date in the current exemption letter, the religious exempt child day center must file with the department documentary evidence that the center is in compliance with the following:

22 VAC 40-191-40.

| Who | What | When |
|---|--|--|
| Prospective employee, volunteer, or any other person who is expected to be alone with one or more children enrolled in the religious exempt child day center except a parent-volunteer, or a parent or guardian who may be left alone with his or her own child | Sworn statement or affirmation | Before employment or commencement of service at the facility |
| | Search of central registry and criminal history record clearance check, as requested by the individual | Within 30 days of employment or commencement of service |

3. Background checks are required for independent contract employees and employees hired by a contract agency.

If a licensed, registered, or approved facility uses independent contract employees or contract employees hired by a contract agency who will be involved in the day-to-day operations of the facility or who will be alone with, in control of, or supervising one or more children, the facility must:

- a. Obtain background checks according to the above requirements for employees, or view the original required background checks maintained by the contract employee or contract agency;
- b. Accept all satisfactory background checks dated less than six months before independent contract employees or contract employees hired by contract agencies begin providing services at facilities;
- c. Make copies, and keep them at the licensed, registered, or approved facilities. Staff must write on the copies of the criminal record reports that they are photocopies of originals that facility staff verified; and
- d. Provide a sworn statement or affirmation, search of central registry and criminal history record check before three years since the dates of the last sworn statement or affirmation, most recent central registry finding and most recent criminal history record check report.

22 VAC 40-191-40.

4. A person 18 years of age and older must have background checks:

| Who | What | When |
|--|--|---|
| Person living in: The home of an applicant*, The home of a licensed or registered family day home provider, A foster home approved by a licensed child-placing agency, An independent foster home, or An adoptive home approved by a licensed child-placing agency, until the adoption is final | Sworn statement or affirmation | When person age 18 years or older begins residing in the home or when a person in the home becomes 18 years old |
| | Search of central registry and criminal history record check, as requested by the individual | Within 30 days of an 18-year-old beginning to reside in the home or a person in the home becoming 18 years old |
| * Note: This does not apply to applicants for family day systems, licensed child-placing agencies, and religious exempt child day centers. | | |

5. A person 14 years of age and older must have a search of the central registry and make the information available for regulatory purposes:

| Who | What | When |
|---|--|---|
| a. Person living in: An applicant's home, Home of a licensed or registered family day home provider, A foster home approved by a licensed child-placing agency, An independent foster home, or An adoptive home approved by a licensed child-placing agency, until the adoption is final | Child protective services central registry check | Within 30 days of a 14-year-old beginning to reside in the home or a person in the home becoming 14 years old |

b. Exception: A person 14 years of age to 18 years of age who is placed in a foster home by a child-placing agency is not required to have a search of the central registry.

6. A facility must not accept a required criminal history record report or a central registry finding from an applicant, licensee, registrant, or other person required to obtain background checks that is dated more than 90 days prior to the date of

22 VAC 40-191-40.

employment, volunteering, residing in the home, or approving a family day home or foster or adoptive home.

7. Exception: See provisions for contracting agencies at subdivision C 3 of this section.

8. The department must not accept a required criminal history record report or a central registry finding from an applicant, licensee, registrant, or person who signs the statement of intent to operate a religious exempt center that is dated more than 90 days prior to date of licensure, registration, approval or exemption, or from the date when the person designated as the applicant or licensee changes.

9. The background checks remain valid at the facility if no more than 12 consecutive months have passed from when a person (i) began a leave of absence from that facility; (ii) was terminated from employment at that facility; or (iii) was transferred to a facility owned and operated by the same employer or entity, unless there is a criminal conviction or a founded complaint of child abuse and neglect during that period.

22 VAC 40-191-50. Explaining requirements for satisfactory background checks.

A. The department and registering and approving authorities must require documentation of satisfactory background checks for applicants, agents, employees, volunteers, and others living in family day homes as specified in 22 VAC 40-191-40.

1. A satisfactory sworn statement or affirmation is:

a. A fully completed original that states that the person:

(1) Does not have a criminal conviction that is a barrier crime or is any felony conviction within the last five years; and

(2) Is not the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth; and

b. When there is no other knowledge that the individual has an unsatisfactory background.

Criminal convictions include prior adult convictions and juvenile convictions or adjudications of delinquency based on a crime that would be a felony if committed by an adult within or outside the Commonwealth. Convictions also include convictions in other states that are equivalent to those specified in this section.

2. A satisfactory central registry finding is one in which:

22 VAC 40-191-50.

a. A copy of the department's child protective services check form is returned to the requesting agency or state or local Department of Social Services indicating that, as of the date on the reply, the individual whose name was searched is not identified in the Central Registry of Founded Child Abuse/Neglect Investigations as an involved caregiver with a founded disposition of child abuse/neglect; and

b. There is no other knowledge that the individual has a founded disposition in Virginia or elsewhere.

3. A satisfactory criminal history record check report is one in which:

a. An original hard copy or Internet inquiry reply from the Department of State Police is returned to the agency, individual or authorized agent making the request with:

(1) No convictions indicated; or

(2) Convictions indicated, but no barrier crimes or other felony convictions in the last five years; and

b. There is no other knowledge that the individual has a barrier crime, or other felony conviction in the past five years, in Virginia or elsewhere.

The facility must have viewed an original criminal history record report maintained by a contract employee or contract agency that is dated less than six months before the independent contract employee or contract employee is hired by a contract agency begins providing services at the facility. (See also 22 VAC 40-191-90.)

4. A child-placing agency may approve as an adoptive or foster parent an applicant convicted of not more than one misdemeanor of assault and battery, as defined in § 18.2-57 of the Code of Virginia, not involving abuse, neglect, moral turpitude, or a minor, provided 10 years have elapsed following the conviction.

5. A child-placing agency may approve as a foster parent an applicant convicted of statutory burglary for breaking and entering a dwelling home or other structure with intent to commit larceny, who has had his civil rights restored by the Governor, provided 25 years have elapsed following the conviction.

6. A child-placing agency must consider the results of background checks on a birth parent prior to placing the child of the birth parent with a birth parent, when child is in a foster care placement.

22 VAC 40-191-50.

7. No petition for adoption shall be granted if an adoptive parent has been convicted of a sexually violent offense or an offense requiring registration pursuant to § 9.1-902 of the Code of Virginia.

8. A child-placing agency may approve as an adoptive or foster parent an applicant convicted of felony possession or distribution of drugs, who has had his civil rights restored by the Governor, provided 10 years have elapsed following the conviction.

B. Background checks results are not open ended.

1. When a minor living in a family day home turns 18, the operator is responsible for making sure that the 18-year-old complies with all background check requirements for adults. (22 VAC 40-191-40 C 4)

2. Operators must submit new background checks as part of the renewal application packages of registered family day homes. With the exception of those facilities that are exempt per § 63.2-1716 of the Code of Virginia, background checks are required every three years for all other persons required to have background checks. (See 22 VAC 40-191-40 C.)

3. If a person leaves a facility and the criminal history record report or central registry check finding is less than 91 days old, the person must be permitted to take the report or reports with him. The facility must keep a copy of any report a person takes and write on it that it is a copy, and that the original of any criminal history record report was verified.

4. Unless there is a criminal conviction or a founded complaint of child abuse and neglect during that period, a background check remains valid at a facility if no more than 12 consecutive months have passed from when a person:

- a. Began a leave of absence from that facility;
- b. Was terminated from employment at that facility; or
- c. Was transferred to a center owned and operated by the same employer or entity.

5. The facility, department, or registering or approving authority may require a new background check relevant to this suspicion if there is reason to suspect that a person who has submitted acceptable background checks, as required by this regulation, has:

- a. A barrier crime conviction in Virginia or elsewhere;

22 VAC 40-191-50.

b. A felony conviction that is not for a barrier crime within the last five years in Virginia or elsewhere; or

c. A founded complaint of child abuse and neglect in Virginia or elsewhere.

6. When the facility, department, or registering or approving authority chooses to require a new background check:

a. The facility, department, or registering or approving authority may allow the person to continue the same relationship with the child welfare agency until the child care provider or licensing, registering, or approval authority receives the new Virginia background check information or equivalent documentation from another state; or

b. If there is reason to suspect that a person has a barrier crime conviction, a felony conviction in the last five years, or has a founded complaint of child abuse and neglect, the facility, department, or registering or approving authority may require that the person not be alone with children, even if the documentation is not Virginia background check information or equivalent information from another state.

C. With the exception of those facilities that are exempt per § 63.2-1716 of the Code of Virginia, waivers of some criminal convictions are possible. Refer to 22 VAC 40-191-90 through 22 VAC 40-191-130 for an explanation of the waiver.

22 VAC 40-191-60. Explaining consequences of unsatisfactory background checks results.

A. Applicants are denied licensure, registration or approval when there are unsatisfactory background checks results for:

1. Applicants as a child welfare agency;

2. Agents at the time of application who are or will be involved in the day-to-day operations of the child welfare agency or who are or will be alone with, in control of, or supervising one or more of the children;

3. Any other adult, or any child aged 14 or older, living in the home of an applicant for licensure or registration as a family day home with an unsatisfactory central registry finding;

4. Any other adult, or any child aged 14 or older, living in a foster home, or in the home of adoptive parents, until the adoption is final with an unsatisfactory central registry finding;

22 VAC 40-191-60.

5. Prospective foster or adoptive parents approved by child-placing agencies; and
6. Prospective family day home operators and family members seeking approval by family day systems.

B. An employee or volunteer of a licensed or registered child welfare agency or of a family day home approved by a family day system must not be employed or provide volunteer service until the agency or home has the person's completed sworn statement or affirmation.

C. An employee or volunteer of a licensed or registered child welfare agency, or of a family day home approved by a family day system, must be denied continued employment or volunteer service if:

1. The licensed or registered child welfare agency or family day system does not have an original criminal history record report within 30 days of employment or volunteer service; or
2. The licensed or registered child welfare agency or family day system does not have a central registry finding within 30 days of employment or volunteer service.

D. No violation will occur and an employee may continue to work, provide service, or live in a licensed, registered, or approved family day home if the facility has documentation that the criminal history record request, or the request for search of the central registry, was submitted within seven calendar days of the person being employed or volunteering, but the report is not returned within 30 calendar days.

1. If a requested report was sent within seven calendar days but was not returned within 30 calendar days, the requester must contact within four working days:

- a. The Central Criminal Records Exchange of the Department of State Police; or
- b. The Child Protective Services Unit of the department.

2. If the request was not received, the requestor must submit another request within five working days after the contact.

3. This provision also applies to someone beginning to live in a family day home after licensure, registration or approval is given or a child who becomes 18 years of age. It also applies to a child protective services central registry check for a person who becomes 14 years of age.

22 VAC 40-191-60.

E. If the department or a local agency becomes aware that a person covered by this regulation has a disqualifying background, the department or local agency may release this information to facilities that are covered by this regulation. Those facilities must not further disseminate this information.

This provision also applies to a new adult beginning to live in a family day home or a child living in a family day home who becomes 18 years of age after licensure, registration or approval is given. It also applies to a child protective services central registry clearance for a person who becomes 14 years of age.

F. Licensed, registered, or approved facilities must inform compensated employees and volunteers that the facilities are requesting child protective services registry checks and criminal history record reports for them.

G. A facility may choose to request a national criminal background check, instead of the criminal history record check, for employees and volunteers.

1. The facility must adhere to Department of State Police requirements for obtaining fingerprints, in accordance with § 19.2-392.02 of the Code of Virginia.

2. The department, family day system, and child-placing agency will accept a national criminal background check result of "qualified" from the Department of State Police.

3. If the screening result is "disqualified," the facility must obtain a satisfactory criminal history record check from the Central Criminal Record Exchange for the person if:

- a. The facility wishes to employ the person or approve the person as a volunteer; or
- b. The entity wishes the department to issue a license or registration; or
- c. The facility wishes a family day system or child-placing agency to issue an approval.

H. The facility may also require a background check from another state per the provisions in subdivision B 5 of 22 VAC 40-191-50.

I. A facility that does not comply with this regulation may have its licensure, registration, approval, or religious exempt status revoked or denied.

J. If a facility has knowledge that a person required to have a background check has an offense, and this person has neither a waiver nor an exception per 22 VAC 40-191-50 A, and the facility refuses to separate the person from employment, service, or

22 VAC 40-191-60.

residence in a family day home, then licensure, registration, or approval must be revoked or denied.

22 VAC 40-191-70. Keeping background check records.

A. A facility must keep background check records at the location where the person is an applicant, agent, employee, contract employee, volunteer, other adult in the home, or is any other adult who is involved in the day-to-day operations of the facility or who is alone with, in control of, or supervising one or more children.

1. If a facility is among two or more owned by the same entity, the background check reports and findings may be kept at corporate headquarters or at the facility and must be made available to the department representative upon request.

2. If a facility is not the primary work place for a person, the facility may keep copies on site, if there is:

a. Documentation of the place where original background check records are kept; and

b. Copies of the sworn disclosure statement or affirmation, criminal history record report with a statement that the facility designee has viewed and verified the original, and the child protective services central registry check form must be kept on site.

B. Contracting organizations and voluntarily registered family day homes certified eligible for registration by contracting organizations must keep background check records.

1. The contracting organization must keep:

a. The original criminal history record report and sworn statement or affirmation for the voluntarily registered provider;

b. The original or a copy of the central registry findings; and

c. A copy of the criminal history record report and central registry findings for all provider assistants, substitute providers, and central registry findings for persons aged 14 and older residing in the home.

2. The voluntarily registered family day home provider must keep:

22 VAC 40-191-70.

- a. The original criminal history record report and sworn statement of affirmation for any provider assistant, substitute provider, and any adult residing in the home; and
 - b. The original or a copy of the central registry finding for any provider assistant, substitute provider or any person aged 14 and older residing in the home; and
 - c. Copies of the provider's own background check records.
- C. Family day systems and family day homes approved by family day systems must keep background check records. The requestor identified on the form must keep the original criminal history record check result and the original or copy of the child protective services central registry finding, and the other party keeps copies. The family day system must keep the original sworn disclosure statement or affirmation.
- D. A voluntarily registered family day home must keep all background check information for two years after a person required to provide background check terminates his duties with a facility or no longer resides in the home. All other facilities must keep all background check information for one year after a person required to provide background checks terminates his duties with a facility or no longer resides in the home.
- E. The sworn statement or affirmation, criminal history record report, and central registry finding must be kept in locked files.
- F. Applicants and agents, and their designees, are the only facility staff who may have access to these documents. The board president must have access to these documents.
- G. If a person is denied licensure, registration, or approval, or is denied employment or volunteer service because of information on a sworn statement or affirmation, a central registry finding, or criminal history record report, the facility must provide a copy of the information obtained from the central registry or the Central Criminal Records Exchange or both to the person.
- H. A facility must also release a copy of the information obtained from the central registry or the Central Criminal Records Exchange or both when the subject of the information requests it.
- I. Further dissemination of the background check information is prohibited other than to the commissioner's representative or a federal or state authority or court in order to comply with an express requirement in the law for that dissemination. (See the provisions at 22 VAC 40-191-60 E.)

22 VAC 40-191-80. Describing the waiver of criminal conviction.

The waiver of criminal conviction is the department's canceling the consequences of an unsatisfactory criminal history record check only for specific convictions.

22 VAC 40-191-90. Identifying who may apply for a waiver.

A. Any person who wants to operate or to volunteer or work at a facility covered by this regulation, with the exception of those facilities that are exempt per § 63.2-1716 of the Code of Virginia, but who is disqualified because of a criminal conviction, or a criminal conviction in the background check of any other adult living in a family day home governed by this regulation, may apply in writing to the commissioner of the department for a waiver.

B. The requirements found in 22 VAC 40-191-100 through 22 VAC 40-191-150 also apply to licensed child day care centers.

C. A person may apply for a waiver if:

1. A nonbarrier crime felony conviction occurred less than five years previously; or
2. Any other adult living in the home of a family day home applicant or provider has been convicted of not more than one misdemeanor offense of assault and battery or assault and battery against a family or household member. (See §§ 18.2-57 and 18.2-57.2 of the Code of Virginia.) The other adult must not be an assistant or substitute provider. See 22 VAC 40-191-50 A for an exception that applies to prospective adoptive parents.

D. Except as provided in 22 VAC 40-191-50 A, no person guilty of a barrier crime may operate or volunteer or work at a licensed child care center or facility governed by this regulation.

22 VAC 40-191-100. Explaining waiver application requirements.

A. The person requests a waiver application package from the licensing office that serves the area where the person with the disqualifying background check lives or wants to operate or volunteer or work at a facility covered by this regulation. The person sends the completed application and a waiver application fee made out to "Treasurer of

22 VAC 40-191-100.

Virginia" to the licensing office. The commissioner establishes the fee. It is identified in the application package.

B. Exception: A person wishing to operate a voluntarily registered family day home requests a waiver application from either the contracting organization or the voluntary registration consultant in the Division of Licensing Programs of the department. The person sends the completed application and application fee to the voluntary registration consultant in the Division of Licensing Programs.

C. The commissioner acknowledges, in writing, receipt of the application and notifies the requester and the sponsor whether the request appears to be complete.

22 VAC 40-191-110. Describing the contents of a waiver application.

A. The waiver application is a personally prepared application.

B. The waiver application must be submitted in typewritten form or neatly printed and must include:

1. A statement that the request was solely and personally prepared by the requester, or other adult living in a family day home, as applicable, and has not been edited or changed by anyone else.

Exception: the document may be typed by another person;

2. A statement that the requester understands that the waiver will be available for inspection by the public and that the facility will provide a copy of the waiver to every parent and guardian if the waiver is granted;

3. A statement that the requester understands that information in the waiver application package will be made available by the commissioner to any person upon request if the waiver is granted;

4. Personal and employment information;

5. If the request is for a family day home, all members of the household and their relationship to the requester;

6. A factual account of the crime of the person with the disqualifying conviction;

22 VAC 40-191-110.

7. The current status and history with justice systems of the person with the disqualifying conviction;

8. Other information the person with the disqualifying background wants the commissioner to consider in evaluating the waiver request;

9. An explanation of why the waiver should be granted; and

10. Seven attachments:

a. A nonrefundable check, made payable to the "Treasurer of Virginia," for waiver application processing;

b. For the person with the disqualifying conviction:

(1) A "Current Employment and Employment History Form";

(2) A copy of the current sworn statement or affirmation;

(3) A copy of the current criminal history record report;

(4) A copy of all necessary documents verifying the person's statements regarding past and current involvement with adult or juvenile justice systems within or outside the Commonwealth;

(5) At least four references by disinterested individuals who will vouch for the "good moral character and reputation" of the person with the disqualifying conviction;

(6) The Sponsoring Agency Statement; and

(7) A notarized signature page.

C. If the waiver application is for another adult living in a family day home, the department conducts a home study to:

1. Assess the safety of children placed in the home; and

2. Determine that the offender is now a person of good moral character and reputation.

22 VAC 40-191-120. Describing the waiver evaluation criteria.

A. The commissioner may delegate all aspects of processing and evaluating waiver requests, provided that responsibility for making the final decision may not be delegated below the level of a division director.

B. The final decision is based on the following:

1. The content of the waiver application package;
2. The nature of the conviction or convictions and relevance to decision criteria;
3. The extent and pattern of criminal history or child abuse and neglect, including the person's age when the act occurred and how long ago the act occurred; and
4. In the case of prospective foster parents for a licensed child-placing agency, a review of the criminal record requirements of the Safe Families and Adoption Act of 1997 (42 USC § 1305) to determine if this federal law would permit a waiver.

C. The applicant may be required to provide additional information that is reasonable and necessary to evaluate the application.

D. The commissioner may interview the applicant or other persons sufficient to verify and evaluate the information in the application package.

E. The commissioner may grant a waiver if the commissioner determines that:

1. The person is now of good moral character and reputation; and
2. The waiver would not adversely affect the safety and well-being of children in the person's care.

F. The commissioner will consider a waiver application abandoned, and close the file, when:

1. More than 60 days have passed since the commissioner advised the requester and the sponsoring agency that the waiver application was incomplete, or since the commissioner requested additional information that was reasonably necessary to evaluate the application; and

22 VAC 40-191-120.

2. The commissioner informs the requester by certified mail that the waiver application would be considered abandoned unless the requester provides the requested information within 15 days.

G. Waiver decisions are not appealable.

22 VAC 40-191-130. Describing the waiver decision notification process.

A. The commissioner notifies the requester, or other adult if applicable, and the sponsor of his approval or denial in writing by certified mail.

B. Any approved waiver is for a specific person and a specific facility and must include:

1. Name of individual;
2. Name of facility;
3. Effective dates;
4. Terms, conditions, and stipulations, if any;
5. Criminal conviction for which the waiver was granted;
6. Date of criminal conviction;
7. Relevant court and location;
8. Sentence served; and
9. Signature of commissioner, or designee, and date.

22 VAC 40-191-140. Modifying, revoking, and terminating waivers.

A. The person and the sponsoring agency may request a modification of any of the terms, conditions, or stipulations of a waiver.

B. The commissioner may revoke a waiver if, after investigation, he determines that:

1. The waiver application contained false, deceptive, or misleading information;

22 VAC 40-191-140.

2. The terms, conditions, or stipulations of a waiver have been violated; or

3. New or expanded information becomes known about the person that would change the previous determination made about the person's character, reputation, or suitability to work with or be in proximity to children.

C. If a waiver is revoked, the commissioner informs the person and the sponsoring agency, in writing by certified mail, of the reasons for the revocation.

D. A waiver automatically expires when:

1. The person terminates the approved arrangement with the sponsoring facility;
2. Five years have passed from the last date of a conviction for the felony or felonies for which the waiver was granted; or
3. The other adult living in a family day home was the reason for the waiver and the other adult no longer lives in the home.

22 VAC 40-191-150. Explaining the waiver public notification requirements.

A. Notification about waivers is conducted in accordance with agency policy.

B. The facility must post in a conspicuous place on the premises any waiver granted by the department.

C. The facility must notify in writing every parent and guardian of the children in its care of any waiver granted for its operators, employees, volunteers, or adult family members living in the home. This notification includes parents and guardians whose child is placed with a foster parent or whose child is to be placed with an adoptive family. This notification also includes parents and guardians who, in the future, enroll children.